IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 28 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJULABEN CHANDRAKANT DOSHI
Versus
PUNJABHAI POLABHAI BHARWAD

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Appearance :
MS SEJAL K MANDAVIA for the applicant
Mr MITESH R AMIN for the Opponent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 22/03/2006

ORAL JUDGMENT :

The petitioner herein is the original plaintiff who instituted a suit being Regular Civil Suit No.437 of 1982 before the Civil Court, Dholka for getting the decree for possession as well as

for recovery of arrears of rent from the defendant-tenant. The case of the plaintiff is that the plaintiff is the owner of the disputed land situated at village Rohika, Taluka Dholka, District Ahmedabad. The case of the plaintiff further is that it was agreed by the plaintiff and the defendant to construct a hotel over the suit land and they were to run the business of hotel jointly. A partnership deed was executed in this behalf between the plaintiff and the defendant. However, subsequently, the plaintiff was not willing to continue the said business with the defendant and therefore it was decided not to continue the said partnership firm. The defendant thereafter agreed to continue in occupation of the suit premises as tenant at a monthly rent of Rs.500/-. It is further the case of the plaintiff that the defendant has not paid the rent and, therefore, the plaintiff sent a demand notice demanding the rent from 1.7.1987 to 31.10.1987, but the same was not complied with by the defendant. The plaintiff, therefore, filed the aforesaid suit for getting the decree for possession on the ground of arrears of rent. It is also the case of the plaintiff that the defendant has illegally transferred and sublet the suit premises to a third person. Another ground which was pressed into service was requirement of the premises for the personal use and bona fide use of the plaintiff. The plaintiff, therefore, filed the aforesaid suit for getting the decree for possession on the aforesaid grounds.

The defendant resisted the said suit by filing his written statement at Exhibit 13. The suit was denied on various grounds. The learned trial Judge after recording the evidence and after hearing the advocates for the parties partly allowed

the said suit. The learned trial Judge dismissed the suit for possession but passed a decree regarding arrears of rent to the tune of Rs.69,200 and fixed the rent of the suit premises at the rate of Rs.500 per month. The learned trial Judge granted installment of Rs.10,000 per month each.

Against the aforesaid decree of the trial Court, the petitioner herein filed an appeal being Regular Civil Appeal No.60 of 1995. So far as the original defendant is concerned, he had also preferred appeal being Regular Civil Appeal No.59 of 1995 challenging order of the trial Court in connection with fixation of standard rent and ordering the defendant to pay the arrears of rent. The learned Joint District Judge and Fast Track Court No.1, Ahmedabad (Rural) decided both the said appeals together and by his common judgment and order dated 24.09.2003 dismissed both the appeals. Being aggrieved by the aforesaid decision of the learned appellate Judge by which he has dismissed the appeal of the plaintiff being Regular Civil Appeal No.60 of 1995, the original plaintiff has filed this revision application invoking Section 29(2) of the Bombay Rent Act.

The learend advocate for the petitioner – original plaintiff has vehemently submitted that the appellate Court has committed an error of law in holding that unless the order of the trial Court is improper/ illegal or against propriety, the appellate Court cannot interfere with the said order. In this connection, the observation made by the learned Appellate Judge is worth noting. The appellate Court while dealing with the appeal filed by the present petitioner has observed in

paragraph 18 as under:-

> “18 While arguing this appeal on merits it is stated on behalf of the appellant i.e. original plaintiff that the learned trial Judge has not properly concluded the points regarding original defendant is in arrears of rent for more than six months, the legitimate dues from the defendant, suit premises required for personal use bona fidely, and eviction decree to be passed in favour of the appellant – plaintiff. Now in this regard if we go through the judgment under challenge as well as record of the original suit then the learned trial Judge has assigned detailed reasons for holding the point that the rent receipt Ex.99 is true beyond reasonable doubt. The learned trial Judge has also held that the respondent has paid the rent up to 1/7/1982. I have no reason to interfere with the conclusion of the trial Court with a simple reason that the suit has been decided on merits by trial Court after recording oral as well as documentary evidence. If the conclusion is improper, illegal and obviously against propriety then and then only the appellate Court shall interfere with the same. Thus, the powers of appellate court are very limited while deciding Regular Civil Appeal on merits. And that too in a case where the judgment and decree is passed on merits. If we go through the record then it is also properly hold that the respondent has paid the amount of Rs.7000=00 i.e. the due rent for 14 months form 1.7.1982 to 27.9.1983. So the respondent cannot be termed as

> a tenant in arrears of rent for more than six months. So in this regard also I do not find any substance in arguments as well as claim of the appellant that receipt Ex.99 is forged one and the respondent is in arrears of rent for more than six months. Thus, in view of Ex.99 the rent receipt it is obviously proved that the respondent has paid the rent of the suit premises upto 1.7.1982. The original suit has been filed on 2.12.1982 thus, on the day of institution of the suit the respondent was the tenant in arrears of rent for more than 4 months only. So in that regard also he cannot be treated as a tenant in arrears of rent for more than six months. Thus the appellant has failed to comply with the provisions of Section 12(3) of the Rent Act. So if we take into consideration all these facts it is obviously clear that the appellant has failed to prove the point that the respondent is the tenant in arrears of rent for more than six months, on this ground the appellant is not entitled for eviction decree whatsoever."

The appellate Court has also further found that the original plaintiff was permitted to withdraw the amount which was deposited as per the order of the appellate Court and in that view of the matter the plaintiff is not entitled to get any relief as regards the decree for possession on the ground of arrears of rent.

It is required to be noted that the appellate Court is assigned very important duty while deciding the appeal which

is filed against a final order. It is not in dispute that the appellate Judge was dealing with a regular appeal and while deciding such appeal the learned appellate Judge is required to go through the entire record and proceedings of the case and can take his own decision by giving a finding of fact. The appellate Court is the final Court so far as the finding of fact is concerned. In that view of the matter, very important duty is assigned to the appellate Court while deciding the regular appeal. In various matters, this Court has noticed that the learned Fast Track Judges while deciding the regular appeals are often rejecting the said appeals by observing that the powers of the appellate Court are very limited and unless the trial Court has committed any error of law, the order of the trial Court is not required to be disturbed where the trial Court has used its discretion properly. As pointed out earlier, the appellate Court can reach to its own conclusions independently by going through the record of the case. The appellate Court had got very wide powers as per Order 41 of the Civil Procedure Code. The appellate Court is required to consider the entire record and the evidence independently on its own merits. The first appellate Court is required to analyze the evidence on record minutely and it is bound to record its finding of fact appropriately after considering the evidence – oral as well as documentary which is available on record. The appellate Court, therefore, should bear in mind the distinction between a regular appeal such as the one with which we are concerned in the present case and an appeal which is preferred against an interlocutory order under Order 43 of the Civil Procedure Code. The scope of appeal under Order 43 as well as the scope of a regular appeal is required to be kept in mind. While deciding

the regular appeal the scope of Order 43 cannot be taken into consideration as the scope of both the aforesaid proceedings are entirely different. Unless the appellate Court is aware of the distinction between the appeals filed under Order 43 of the Civil Procedure Code and the one filed under Section 96 of the Civil Procedure Code or under Section 29 of the Bombay Rent Act, the appellate Court is bound to commit a mistake of treating the regular appeal on par with an appeal filed under Secton 43 of the Civil Procedure Code. In the instant case, unfortunately, the appellate Court has found in paragraph 18 of its order that if the conclusion is improper, illegal and obviously against propriety then and then only the appellate Court shall interfere with the same. Thus, the powers of appellate court are very limited while deciding Regular Civil Appeal on merits, and that too in a case where the judgment and decree is passed on merits. Unfortunately, while observing as above, the learned Judge has completely lost sight of the fact that while deciding the regular appeal, the powers of the appellate Court are very wide and the appellate Court can re-appreciate the entire evidence on record and can come to its own independent conclusion. The appellate Judge has committed a clear error of law while observing that the powers of appellate Court are limited while dealing with a regular appeal and that it cannot interfere with the order of the trial Court when the suit was decided on merits.

In my view, in view of the reasoning of the appellate Judge as stated above, the order of the appellate Judge cannot sustain. It is hoped that the appellate Court shall take due care while deciding the regular appeal by going through the entire

record and the appellate Court is required to discuss the entire evidence, oral as well as documentary, available on record. The concerned appellate Court should take proper care in future while deciding the appeal against a decree of the trial Court.

In the instant case, as rightly pointed out by learned advocate for the petitioner, Ms Sejal Mandavia that even though it was argued before the appellate Court that the plaintiff requires suit premises for bona fide use and occupation, the said point was not even dealt with by the learned appellate Judge in the judgment. She has submitted that in paragraph 11 of the judgment the argument was recorded by the appellate Judge that it was argued by the advocate for the plaintiff that there is ample evidence on record to show that the suit premises are required for personal use and bona fide use by the plaintiff. While deciding the appeal, the learned Judge has not dealt with the said point at all. It is also required to be noted that the appellate Judge has also negatived the claim of the plaintiff regarding arrears of rent by observing that the rent due and demanded is less than six months and, therefore, the tenant cannot be treated as a tenant who is in arrears of rent for more than six months. In this behalf, the appellate Court has also not considered the provisions of Section 12(3)(a) and 12(3)(b) of the Bombay Rent Act in proper perspective. If a tenant is in arrears of rent for less than six months, naturally, the provisions of Section 12(3)(b) come into picture as Section 12(3)(b) provides “in any other case” which would mean that if a person is in arrears of rent for

a period less than six months, the case would be governed by Section 12(3)(b). It is not the requirement of law that the landlord cannot file a suit for eviction unless the tenant is in arrears of rent for a period more than six months. If the tenant is in arrears of rent for a period less than six months, then such case would be governed by Section 12(3)(b) and if he is in arrears of rent for a period more than six months, the provisions of Section 12(3)(a) will be applicable. Even if the landlord has withdrawn the rent deposited in the Court, on that ground it cannot be said that he is not entitled for decree for possession in case other ground exists for passing such a decree and in that case withdrawal cannot come in the way of the landlord. The learned appellate Judge has not appreciated the provisions of law properly. While deciding the matter quickly and speedily, the Fast Track Courts should ensure that the quality of the judgment should not be a matter of casualty. Proper care is therefore required to be taken by the Fast Track Judges while deciding the cases as along with the speed, quality of justice should not be made a casualty. Considering the aforesaid aspect, there is no other option but to allow this revision application. The judgment and order passed by the learned Joint District Judge, Fast Track Court No.1, Ahmedabad (Rural) is quashed and set aside. Considering the fact that the approach of the appellate Court is contrary to law, the matter is sent back for re-decision on the question of arrears of rent and bona-fide requirement as per the observations made in this order. At the cost of repetition, it is again pointed out that the appellate Court shall decide all the points raised in the Appeal No.60 of 1995 and shall consider oral as well as documentary evidence available on record while deciding the appeal without

being influenced by the fact that the trial Court has decided the matter on merits. It is clarified that so far as the merits of the case are concerned, the observations made by this Court are not to be taken into account as this revision application is allowed only on the question of law as indicated in the order and this Court has not expressed any opinion whatsoever on the merits of the case. It is clarified that since on the question of subletting no issue is framed by the trial court, it is not necessary to decide the said question again and the appellate Court shall decide the question of bona fide requirement as well as arrears of rent. Since the original tenant has not filed revision application against the order of the the appellate Court passed in Regular Civil Appeal No.59 of 1995, now the appellate Judge has to decide Regular Civil Appeal No.60 of 1995 only within a period of six months from the date of receipt of order of this Court.

Rule is made absolute with no order as to costs. Writ to be sent to the trial Court forthwith. Record and proceedings be sent back to the trial Court forthwith.

(P.B.Majmudar, J.)

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